(129)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : **Hon'ble Shri H.L. Dattu, CJ.**

Writ Petition No. 2162 OF 1987.

Petitioner Sewa Ram Tamrakar,
S/o. Shri Udai Prasad Tamrakar, aged about 37 years, Upper Division Teacher, Higher Secondary School, Nandkathi, Tah. & Distt. Durg (M.P.)

Vs.

Respondents

1. State of Madhya Pradesh, through : Secretary, School Education Department, Govt. of Madhya Pradesh, Bhopal (M.P.)
2. Commissioner, Public Instructions, Bhopal, (M.P.)
3. Joint-Director, Durg – Education Division, Durg (M.P.)
4. President, Jagrati Shikshan Samiti, Nandkathi, Tah. & Distt. Durg (M.P.)
5. Shri Krishna Kumar Sharma, Principal, Higher Secondary School, Village – Nandkathi, Tah. & Distt. Durg (M.P.)

Petition under Articles 226/227 of the Constitution of India for writs in the nature of certiorari, Mandamus quowarranto prohibition etc. and for further appropriate directions.

Present: Ms. Sharmila Singhai, counsel for the petitioner.
Shri A. S. Kachhawaha, G.A. for respondents No. 1 to 4.
Shri H.B. Agrawal, Sr. Advocate with Ms. Sangeeta Mishra, counsel for respondent No.5.

ORAL ORDER
(Passed on 11th April, 2007)

The petitioner is working as Upper Division Teacher in a school run by the 4th respondent-society.

(2) In this writ petition filed under Article 226 of the Constitution, the petitioner calls in question the promotion of the 5th respondent to the post of Principal of a school run by the 4th respondent-society and also the endorsement issued by the respondents rejecting the request of the petitioner for promotion to the post of Principal.

(3) According to the petitioner, he had joined the post of Upper Division Teacher in the school run by the 4th respondent-society sometime in the year 1972. His further claim is that he possessed all the requisite qualifications for promotion to the post of Principal. It is further stated in the petition that a responsible person of the society had issued a certificate to the petitioner stating that he had joined the service in the school sometime in the year 1972 and is continuing to work in the said school as in charge Principal.

(4) The petitioner further stated that respondent No.5 had joined as Upper Division Teacher in the school run by the 4th respondent-society sometime in the year 1974. According to the petitioner, he is senior to the 5th respondent and his case ought to have been considered by the 4th respondent for promotion to the next promotional post of Principal but instead of doing so, in order to favour the 5th respondent, who is none other than the younger brother of the Vice President of the society, have appointed him on the post of Principal. The petitioner also produced some correspondence of the Director, Public Instruction dated 15.10.1985 wherein it is stated that the petitioner does not have the requisite qualification for the promotional post of the Principal of the school. For the reason best known to the petitioner, he has not called in question the said communication before any forum, that only means that it has become final.

(5) Respondent No.5 has filed the return before this Court in which it is stated that the certificate issued to the petitioner by one of the persons managing the affairs of the school to the effect that the petitioner is working right from the year 1972, is a concocted document and therefore, no reliance can be placed on the said document. He has also stated that the petitioner without questioning the correctness or otherwise of the letter dated 15.10.1985, he could not have merely questioned the promotion of the 5th respondent to the promotional post of the Principal of the school run and managed by the 4th respondent-society.

(6) One and the only question that arises for consideration and decision by this Court in this case is whether the 4th respondent-society was justified in promoting the 5th respondent to the post of Principal of the school run by the 4th respondent-society. Admittedly, there was a communication to the petitioner by the Director, Public Instruction, dated 15.10.1985 wherein he had observed that the petitioner does not have the requisite qualification for promotion to the next promotional post of the Principal of the school. If for any reason, the petitioner was of the view that he had the requisite qualification and assertion made in that letter as travesty of truth, he could have questioned the same before an appropriate forum. Having accepted the correspondence of the competent authority which has become final, petitioner could not have questioned the appointment of the 5th respondent for the promotional post of Principal of the school.

(7) Even otherwise, the respondents in their return have categorically stated on oath that the certificate obtained by the petitioner to the effect that he had joined the service of the school sometime in the year 1972 is a concocted document, has not been countered by the petitioner by filing any rejoinder before this Court. Therefore, the only inference that can be drawn is that the certificate was issued in his favour and that he had joined the services in the school sometime in the year 1972 and had the requisite the qualification on the date when the 5th respondent was promoted, cannot be accepted.

(8) In this view of the matter, since the petitioner has not called in question the communication of the Director, Public Instruction dated 15.10.1985 which has become final, relief sought for by the petitioner cannot be granted. Accordingly, the petition is liable to be rejected and it is rejected.

Ordered accordingly.

Sd/-
Chief Justice